

AMENDED IN ASSEMBLY APRIL 13, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2371

Introduced by Assembly Member Bates
(Coauthors: Assembly Members Houston, Maze, and Pacheco)

February 19, 2004

An act to amend Sections 6147 and 6157.2 of, and to add Section 6147.1 to, the Business and Professions Code, relating to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

AB 2371, as amended, Bates. Attorneys: Legal Consumers' Protection Act.

Existing law requires an attorney who contracts to represent a plaintiff on a contingency fee basis, in any case other than a contract for recovery of workers' compensation benefits, to provide specified information to the plaintiff at the time the contract is entered into.

This bill would enact the Legal Consumers' Protection Act, which would require a contingency fee attorney to make certain disclosures and reports to a potential or existing client regarding ~~(1) chances of success in the case, (2) estimated and actual attorney hours, (3) estimated fees, and (4) other fee information. The act would prohibit an attorney, or his or her representative, from making unsolicited contact with a potential claimant for at least 45 days after an event resulting in personal injury or death that could give rise to a cause of action. The act would also give the consumer the right to request an objective review of a contingency fee by a court or bar association committee, and to seek specified remedies against an attorney violating any of the above~~

~~provisions the attorney's contingency fee rate and the client's right to rescind a contract with the attorney under specified conditions.~~

Existing law provides for certain limitations on attorney advertising, including an offer of representation on a contingent basis unless it includes a statement advising whether the client will be held responsible for any costs advanced by the attorney when no recovery is obtained.

This bill would also require the statement to disclose whether costs advanced will be added to the fee if the litigation is successful, and, if the statement uses the word or phrases “free,” “no legal fee,” “no fee,” “no expense,” or another similar phrase, requires the statement to include whether or not the client will be responsible for costs associated with litigation and to include the contingency fee or range of fees that will be charged by the attorney if the litigation is successful. The bill would also define terms.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This Act shall be called and may be cited as the
2 Legal Consumers' Protection Act.

3 SEC. 2. The Legislature finds and declares all of the
4 following:

5 (a) For the average person, the legal process is confusing and
6 expensive. Where damages are sought, the contingency fee system
7 allows an individual to defer expenses and thus obtain legal
8 representation that otherwise might be prohibitively costly. Like
9 consumers of any service, legal consumers can make meaningful
10 choices only when they are empowered with information in
11 advance of entering into a representation agreement with an
12 attorney. Consumers under sales pressure or otherwise
13 emotionally distraught may find their ability to make rational
14 choices impeded. For this reason, consumer protection statutes
15 contain provisions such as a “cooling off” period during which a
16 contract can be rescinded.

17 (b) ~~One of the ways that the system fails to protect legal~~
18 ~~consumers is in allowing attorneys to contact potential clients as~~
19 ~~soon as they have been injured or have lost a loved one.~~
20 ~~Immediately after an injury or loss, a potential client is not in a~~
21 ~~position to bargain in a fair and equitable manner with an~~



~~experienced contingency fee lawyer. For that reason, federal law prohibits lawyers from soliciting clients in air crash cases for 45 days. A person who has been injured in a hotel fire or an auto accident is no less vulnerable to such solicitation than a victim of an air crash. This bill would simply extend to all California consumers of legal services the same protection from solicitation that already exists as a matter of federal law for victims of airplane accidents and their families.~~

~~(e) Similarly, advertisements~~ *Advertisements* aimed at attracting potential contingency fee clients should be informative and unambiguous. Yet many ads provide little information to potential clients, and, in many ads by lawyers, the word FREE predominates. Other vital information, such as the potential cost of the representation to the consumer, if provided at all, may appear in much smaller print at the bottom of the page. Consumers may be led to believe that they will be receiving something for nothing. California, a state in which false and deceptive trade practices are not tolerated, should assure that legal advertisements provide consumers of legal services with adequate information.

~~(d)~~

(c) Legal consumers should also be provided with enough information regarding the contingency fee agreement to enable them to make informed choices regarding their legal options. Before a client signs a contingency fee contract, the attorney should be required to present the terms of the contingency fee representation in writing to the client in clear and simple language. In California, when someone takes his or her car to be repaired, he or she has a right to a written estimate of the cost of the work before any work is performed and an accounting of the work done and additional costs, such as parts supplied. Consumers of legal services deserve the same basic protections that are given to consumers of auto repair services.

~~(e)~~

(d) Current law takes a step in the right direction by requiring attorneys to put contingency fee agreements in writing and to provide consumers with information such as the fee percentage and how costs will be deducted from the settlement or verdict. Consumers need more information, however, before deciding whether to enter into a contingency fee contract with an attorney. ~~Clients also need to be informed regarding the likelihood of~~

~~success of a claim and the amount of time and effort that an attorney is going to invest in the case. This will allow the consumer to make a reasoned judgment about whether the contingency fee is fair under the circumstances.~~

~~(f)~~

(e) The purposes of this act are to provide a Legal Consumers' Protection Act for every injured person in California who may need the services of a contingency fee lawyer, to promote the free flow of information between injured consumers and contingency fee lawyers, and to lessen economic burdens on the public.

SEC. 3. Section 6147 of the Business and Professions Code is amended to read:

6147. (a) ~~An attorney and any of his or her representatives shall not make unsolicited contact with a potential claimant for at least 45 days after an event resulting in personal injury or death that could give rise to a cause of action by that claimant.~~

~~(b)~~ An attorney who contracts to represent a client on a contingency fee basis, shall, at the initial meeting, disclose to the potential client his or her right to receive a copy of the statement described in subdivision (c).

~~(c)~~

(b) An attorney retained by a claimant on a contingency fee basis shall, ~~at least five days prior to the signing of a contingency fee contract but not later than 30 days after the initial meeting,~~ provide a duplicate copy of a disclosure statement, signed by both the attorney and the potential client or the potential client's guardian or representative, to the potential client or to the potential client's guardian or representative. The disclosure statement shall be in writing *in plain English* and shall include the following information:

(1) ~~The estimated number of hours of the attorney's services that will be spent in settling the claim and the estimated number of hours of the attorney's services that will be spent handling the claim through trial.~~

~~(2) (A)~~ The attorney's contingency fee rate for services regarding the claim and any conditions, limitations, restrictions, or other qualifications on that fee that the attorney deems appropriate.

~~(B)~~

(2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will

1 affect the contingency fee and the client's recovery, *including*
2 *information regarding how fees will be paid to any cocounsel*
3 *associated with the case or agreement to refer the client to another*
4 *attorney in exchange for a referral fee.*

5 (3) A notice of the client's right to rescind the contract within
6 three working days for any reason.

7 (4) A notice of the client's right to obtain information regarding
8 the attorney's disciplinary record by reviewing official bar
9 membership records available at <http://www.calbar.ca.gov>.

10 ~~(C) All other fee agreements to be made concerning the claim,~~
11 ~~including the amount to be paid to any co-counsel associated with~~
12 ~~the case or any agreement to refer the client to another attorney in~~
13 ~~exchange for a referral fee.~~

14 ~~(3) The estimated likelihood of success on the merits or of a~~
15 ~~settlement of the case.~~

16 ~~(d)~~

17 (c) An attorney who contracts to represent a client on a
18 contingency fee basis shall, at the time the contract is entered into,
19 provide a duplicate copy of the contract, signed by both the
20 attorney and the client, or the client's guardian or representative,
21 to the plaintiff, or to the client's guardian or representative. The
22 contract shall be in writing and shall include, but is not limited to,
23 all of the following:

24 (1) A statement of the contingency fee rate that the client and
25 attorney have agreed upon.

26 (2) A statement as to how disbursements and costs incurred in
27 connection with the prosecution or settlement of the claim will
28 affect the contingency fee and the client's recovery.

29 (3) A statement as to what extent, if any, the client could be
30 required to pay any compensation to the attorney for related
31 matters that arise out of their relationship and that are not covered
32 by their contingency fee contract. This may include any amounts
33 collected for the plaintiff by the attorney.

34 (4) Unless the claim is subject to the provisions of Section
35 6146, a statement that the fee is not set by law but is negotiable
36 between attorney and client.

37 (5) If the claim is subject to the provisions of Section 6146, a
38 statement that the rates set forth in that section are the maximum
39 limits for the contingency fee agreement, and that the attorney and
40 client may negotiate a lower rate.

~~(e)~~

(d) A client retaining a lawyer on a contingency fee basis shall be afforded three working days in which to rescind the contract for any reason.

~~(f) An attorney retained by a client on a contingency fee basis shall keep accurate records of the time spent on the client's case and, during the pendency of the claim, shall give monthly reports to the client on time spent, work performed, and progress made in the case.~~

~~(g)~~

(e) An attorney retained by a client on a contingency fee basis shall, within a reasonable time not later than 30 days after the claim is finally settled or adjudicated, disclose in a written statement *in plain English* to the client the following information:

(1) ~~The actual number of hours of attorney services performed in connection with the claim.~~

(2) ~~The total amount of the contingency fee for attorney services performed in connection with the claim.~~

(3) ~~The actual fee per hour of the attorney's services performed in connection with the claim, determined by dividing the total contingency fee by the actual number of hours of attorney services.~~

(h) ~~A client has the right to request an objective review of a contingency fee by a court or a bar association committee to ensure that it is reasonable and fair under the circumstances, based on factors including, but not limited to, all of the following:~~

~~(1) Whether liability was contested.~~

~~(2) Whether the amount of damages was clear.~~

~~(3) How much actual time an attorney reasonably spent on the case.~~

~~(i)~~

(2) *A notice of the client's right to arbitration and mediation pursuant to Section 6200, unless the client has waived this right.*

(3) *A notice that Rule 4-200 of the California Rules of Professional Conduct provides that a lawyer shall not enter into an agreement for, charge or collect an illegal or unconscionable fee.*

(4) *A notice of the client's right to register complaints regarding the attorney's conduct with the State Bar.*

(f) The following remedies shall apply to a violation of this section:

(1) Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall thereupon be entitled to collect a reasonable fee.

(2) A client to whom an attorney fails to disclose information required by this section may, as an alternative to or in addition to the remedy in paragraph (1), bring a civil action for damages in the court in which the claim was or could have been brought.

(3) An attorney who intentionally fails to disclose to a client any information required by this section shall additionally be liable for exemplary damages.

~~(f)~~

(g) The remedies provided for in this section shall be in addition to, and not in lieu of, any other available remedies or penalties.

~~(f)~~

(h) This section shall not apply to contingency fee contracts for the recovery of workers' compensation benefits.

SEC. 4. Section 6147.1 is added to the Business and Professions Code, to read:

6147.1. For purposes of Sections 6147 and 6157.2, the following terms have the following meanings:

(a) "Attorney" means any natural person, professional law association, corporation, or partnership authorized under the applicable laws of this state to practice law.

(b) "Attorney services" means the professional advice of, counseling of, or representation by an attorney. "Attorney services" do not include other assistance provided, directly or indirectly, in connection with an attorney's services, such as administrative or secretarial assistance, overhead, travel expenses, witness fees, or preparation by a person other than the attorney of a study, analysis, report, or test.

(c) "Claim" means a civil action for wrongful death or personal injury brought in a court of this state.

(d) "Claimant" means any of the following:

(1) A natural person who brings a claim.

(2) If a claim is brought on behalf of a deceased person's estate, the personal representative of the deceased person or the estate.

(3) If a claim is brought on behalf of a minor or incompetent, that person's parent, guardian, or personal representative.

1 “Claimant” does not include an artificial organization or legal
2 entity, including, but not limited to, a firm, corporation,
3 association, company, partnership, society, joint venture, or
4 governmental body.

5 (e) “Contingency fee” means the cost or price of an attorney’s
6 services determined by applying a specified percentage, which
7 may be a firm fixed percentage, a graduated or sliding percentage,
8 or any combination thereof, to the amount of a settlement or
9 judgment obtained on a claim.

10 (f) “Initial meeting” means the first conference or discussion
11 between a client and an attorney, whether by telephone or in
12 person, of the details, facts, or basis of a claim.

13 (g) “Retain” means the act of a claimant in engaging an
14 attorney’s services, whether by express agreement or impliedly by
15 seeking and obtaining the attorney’s services.

16 SEC. 5. Section 6157.2 of the Business and Professions Code
17 is amended to read:

18 6157.2. No advertisement shall contain or refer to any of the
19 following:

20 (a) Any guarantee or warranty regarding the outcome of a legal
21 matter as a result of representation by the member.

22 (b) Statements or symbols stating that the member featured in
23 the advertisement can generally obtain immediate cash or quick
24 settlements.

25 (c) (1) An impersonation of the name, voice, photograph, or
26 electronic image of any person other than the lawyer, directly or
27 implicitly purporting to be that of a lawyer.

28 (2) An impersonation of the name, voice, photograph, or
29 electronic image of any person, directly or implicitly purporting
30 to be a client of the member featured in the advertisement, or a
31 dramatization of events, unless disclosure of the impersonation or
32 dramatization is made in the advertisement.

33 (3) A spokesperson, including a celebrity spokesperson, unless
34 there is disclosure of the spokesperson’s title.

35 (d) A statement that a member offers representation on a
36 contingent basis unless the statement also advises whether a client
37 will be held responsible for any costs advanced by the member
38 when no recovery is obtained on behalf of the client and whether
39 the cost shall be added to the fee if the litigation is successful. If
40 the statement uses the word “free,” or the phrases “no legal fee,”

1 “no fee,” “no expense,” or any other phrases indicating that
2 services are provided at no cost to the client, the statement must
3 also provide, in the same size print as the above statement, a
4 statement regarding whether or not the client will be responsible
5 for the costs associated with litigation and the possible range of
6 contingency fees that will be charged by the attorney if the client
7 does recover. If the client will not be held responsible for costs, no
8 disclosure is required.

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